

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Nora Chanko	Team: Squad #3	CCRB Case #: 201603886	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 05/05/2016 3:04 PM	Location of Incident: § 87(2)(b)	Precinct: 106	18 Mo. SOL 11/5/2017	EO SOL 11/5/2017	
Date/Time CV Reported Thu, 05/05/2016 3:15 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 05/05/2016 3:15 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Andres Gonzalez	18072	943311	106 PCT
2. POM Patrick Cahill	24600	952527	106 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Andres Gonzalez	Abuse: Police Officer Andres Gonzalez stopped § 87(2)(b)	
B.POM Andres Gonzalez	Abuse: Police Officer Andres Gonzalez stopped § 87(2)(b)	
C.POM Patrick Cahill	Abuse: Police Officer Patrick Cahill stopped § 87(2)(b)	
D.POM Patrick Cahill	Abuse: Police Officer Patrick Cahill stopped § 87(2)(b)	
E.POM Andres Gonzalez	Abuse: Police Officer Andres Gonzalez threatened to arrest § 87(2)(b)	
F.POM Andres Gonzalez	Abuse: Police Officer Andres Gonzalez stopped § 87(2)(b)	
G.POM Patrick Cahill	Abuse: Police Officer Patrick Cahill stopped § 87(2)(b)	
H.POM Andres Gonzalez	Abuse: Police Officer Andres Gonzalez frisked § 87(2)(b)	
I.POM Patrick Cahill	Abuse: Police Officer Patrick Cahill refused to provide his name and shield number to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

Case Summary

On May 5, 2016, § 87(2)(b) filed this complaint with the CCRB via phone.

On May 5, 2016, at approximately 3:04 p.m., § 87(2)(b) parked his car in front of his grandmother's house, located at § 87(2)(b) in Queens. § 87(2)(b) was in the passenger seat. PO Andres Gonzalez and PO Patrick Cahill of the 106th Precinct stopped § 87(2)(b) and § 87(2)(b) (**Allegations A, B, C, and D**). PO Cahill approached the vehicle and threatened to arrest § 87(2)(b) (**Allegation E**). § 87(2)(b) exited § 87(2)(b) and stood on the sidewalk. PO Gonzalez approached § 87(2)(b) and asked for his ID, which he provided (**Allegations F and G**). PO Gonzalez frisked § 87(2)(b) (**Allegation H**). § 87(2)(b) asked for PO Gonzalez's name and shield number, which he provided. § 87(2)(b) asked for PO Cahill's name and shield number, and he replied by saying that he did not need to give him that information (**Allegation I**). PO Gonzalez and PO Cahill left the scene without issuing any summonses.

No video footage was obtained.

Mediation, Civil and Criminal Histories

- This case was determined to be suitable for mediation; however, § 87(2)(b) rejected mediation § 87(2)(b).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- § 87(2)(b) has filed one previous complaint with the CCRB, Case § 87(2)(b) (01 Board Review). § 87(2)(b)
- § 87(2)(b) has not been associated with any previous CCRB complaints (02 Board Review).
- Because of a lack of identifying information for § 87(2)(b) it could not be determined whether he was involved in any previous CCRB complaints (03 Board Review).
- PO Gonzalez has been a member of the NYPD for nine years and had two previous CCRB cases involving two allegations and no substantiated allegations. § 87(2)(g)
- PO Cahill has been a member of the NYPD for four years and has two previous CCRB cases involving three allegations and no substantiated allegations. § 87(2)(g)
- On July 28, 2016, a FOIL registration confirmed that § 87(2)(b) and § 87(2)(b) have not filed any Notices of Claim for this incident (04 Board Review).

Potential Issues

- Neither § 87(2)(b) nor § 87(2)(b) was available. No contact information was provided for § 87(2)(b) and none could be obtained. The incident occurred outside of § 87(2)(b)'s home. Three letters were mailed to that address and none were returned by the US Postal Service. Searches returned two numbers; five calls were placed to the first number and four voicemails were left. Five calls were placed to the second number; after each call a voicemail was left or a message was left with § 87(2)(b)'s grandmother, who also lives at that residence. To date, he has not responded.

Findings and Recommendations

Allegations Not Pleaded

- The Stop, Question and Frisk Report notes that § 87(2)(b) was searched. § 87(2)(b) did not allege that § 87(2)(b) was searched. PO Gonzalez denied that he searched § 87(2)(b) and stated that he checked the box because he felt a hard object during the frisk (05 Board Review). PO Gonzalez asked what the object was, but did not remove it or search § 87(2)(b) § 87(2)(g)

Explanation of Subject Officer Identification

- § 87(2)(b) alleged that PO Gonzalez approached § 87(2)(b) who was seated in the front passenger seat of the vehicle, asked for his ID, and threatened to arrest him. Both PO Gonzalez and PO Cahill consistently testified that PO Cahill approached the male seated in the front passenger seat of the vehicle, and that PO Gonzalez did not interact with the male in the front passenger seat. § 87(2)(g)
- § 87(2)(b) stated that PO Cahill approached § 87(2)(b) as he exited § 87(2)(b). Both PO Gonzalez and PO Cahill consistently testified that PO Gonzalez approached § 87(2)(b) and that PO Cahill did not interact with the male standing on the sidewalk. PO Gonzalez's memo book entry lists § 87(2)(b)'s information, while PO Cahill's does not (06 and 07 Board Review). PO Gonzalez completed a Stop, Question and Frisk Report for § 87(2)(b) (05 Board Review). § 87(2)(g)

Allegation A – Abuse of Authority: Police Officer Andres Gonzalez stopped § 87(2)(b)

Allegation B – Abuse of Authority: Police Officer Andres Gonzalez stopped § 87(2)(b)

Allegation C – Abuse of Authority: Police Officer Patrick Cahill stopped § 87(2)(b)

Allegation D – Abuse of Authority: Police Officer Patrick Cahill stopped § 87(2)(b)

§ 87(2)(b) parked his rental vehicle in front of his grandmother's house at § 87(2)(b). § 87(2)(b) exited his vehicle and began to walk to a store on § 87(2)(b). § 87(2)(b) remained in the front passenger seat of the vehicle. § 87(2)(b) a construction worker, was wearing his work clothes: black jeans, a blue sweatshirt with white writing, and a backpack.

§ 87(2)(b) had come from work a few blocks away. When § 87(2)(b) was walking on § 87(2)(b) he realized he did not have the correct amount of money. § 87(2)(b) turned around to walk back to his vehicle; he first observed a black, unmarked Ford Taurus with license plate § 87(2)(e) driving south while he was walking north along § 87(2)(b). § 87(2)(b) observed the vehicle make a u-turn at the end of § 87(2)(b) and begin driving north. § 87(2)(b) got into the back seat of his vehicle on the driver side. As § 87(2)(b) entered his vehicle, he saw the unmarked vehicle drive by. § 87(2)(b) changed out of his blue sweatshirt so he did not get his car dirty. § 87(2)(b) put on an orange sweatshirt. By the time § 87(2)(b) looked up after changing his sweatshirt, PO Gonzalez and PO Cahill had approached the passenger side of § 87(2)(b)'s vehicle. § 87(2)(b) recognized both officers and had seen them in the neighborhood before, but had not interacted with them.

§ 87(2)(b) alleged that PO Gonzalez then threatened to arrest § 87(2)(b) as discussed below under **Allegation E**. PO Gonzalez asked § 87(2)(b) for ID. When § 87(2)(b) asked why they needed his ID, PO Gonzalez stated that they had received a complaint that the driveway was blocked. § 87(2)(b) knew that only his family uses the driveway attached to § 87(2)(b) and they were aware that he was using a rental car. § 87(2)(b) believed that he had been racially profiled. § 87(2)(b) stated that the officers returned to the RMP with his and § 87(2)(b)'s ID (14 Board Review).

PO Gonzalez stated that he and PO Cahill were driving in the vicinity of § 87(2)(b) when they first observed a male wearing an orange construction vest (15 Board Review). PO Gonzalez was shown a picture of § 87(2)(b) and could not state whether he was the male wearing the construction vest. § 87(2)(b) was walking around the block on the sidewalk. PO Gonzalez and PO Cahill followed § 87(2)(b) around the block and had a brief conversation about him. PO Gonzalez and PO Cahill noted that § 87(2)(b) was wearing construction attire despite the fact that there was no construction in the area, which made them both suspicious. PO Gonzalez and PO Cahill were also suspicious of § 87(2)(b) because he was walking around the block. After observing § 87(2)(b) for a few minutes, § 87(2)(b) got into a rental vehicle. PO Gonzalez noted that the area was residential and known to be burglarized; rental vehicles specifically are known to be stolen, burglarized, and used to commit burglaries. PO Gonzalez stated that these conditions existed in the precinct and sector in which the incident occurred. PO Gonzalez stated that he had made about five to eight related arrests between January 2016 and the date of the incident. A search of BADS returned multiple grand larceny arrests made by PO Gonzalez between January and May 2016; however, none involved rental vehicles or residential burglaries (18 Board Review).

PO Gonzalez stated that he and PO Cahill made the decision to stop § 87(2)(b) after he entered the rental vehicle. PO Gonzalez stated that the male wearing the construction attire entered the front passenger seat. PO Gonzalez stated that there were two other males in the back seat of the vehicle, and one male, § 87(2)(b) was exiting the house at § 87(2)(b). PO Gonzalez stated that as he approached the vehicle, he observed the construction vest in the back seat of the car. PO Gonzalez stated the males were not doing anything suspicious. PO Gonzalez approached § 87(2)(b) addressed below in **Allegations F and G**, and PO Cahill approached the male in the front passenger seat of the vehicle. There were no factors specific to § 87(2)(b) other than his construction attire, him walking around the block, and the rental vehicle that led PO

Gonzalez to stop § 87(2)(b) and § 87(2)(b) PO Gonzalez stated that the males were aggressive towards PO Cahill and were agitated, asked why they were being stopped, and said that the officers were harassing them; however, the males were not aggressive towards each other or anyone else prior to being approached by the officers. No Stop, Question and Frisk Reports were prepared for § 87(2)(b) or § 87(2)(b) PO Gonzalez's memo book entries state that there was one car stop, and note § 87(2)(b)'s name, address, and date of birth (06 Board Review).

§ 87(2)(g)
PO Cahill stated that he and PO Gonzalez were driving in the vicinity of § 87(2)(b) when he observed a male wearing an orange t-shirt, jeans or pants, a construction helmet, and a backpack. PO Cahill was shown a picture of § 87(2)(b) and recognized him as the male wearing the construction attire. PO Cahill stated that § 87(2)(b) was on the phone, and explained that often individuals who commit burglaries work in crews, with one person acting as the look out. PO Cahill could not recall whether that was said aloud or discussed in the car prior to stopping § 87(2)(b) PO Cahill noted that at some point in the previous month, he had received credible intelligence that construction workers and people impersonating construction workers had been burglarizing houses in the area using rental vehicles. PO Cahill said that this condition existed in the precinct and in the sector where the incident took place. PO Cahill stated that § 87(2)(b) entered the back seat of the vehicle on the passenger side. There was one male in the front passenger seat and one male standing on the sidewalk. PO Cahill observed construction tools in the back seat of the vehicle, though he could not specify which tools he saw.

PO Cahill stated that he addressed the male in the front seat, identified by the investigation as § 87(2)(b) PO Cahill asked § 87(2)(b) for his ID, which he provided. PO Cahill passed the ID to PO Gonzalez, who noted the information in the Stop, Question and Frisk Report. When PO Gonzalez had finished interacting with § 87(2)(b) he began speaking to § 87(2)(b) PO Cahill stated § 87(2)(b) was not wearing any construction attire and did not do anything to make him suspicious. PO Cahill had no memo book entries related to this incident (07 Board Review).

The Event documents list the event as "10V2," a possible crime involving a suspicious vehicle outside; however, they did not show any calls about a blocked driveway (08 Board Review). The Burglary, Robbery, and Grand Larceny Patterns Spreadsheet from the 106th Precinct from January 1, 2016, to June 26, 2016, did not show any patterns involving rental cars, construction workers, or individuals impersonating construction workers in any sector prior to May 5, 2016 (09 Board Review).

People v. DeBour states that an officer may stop an individual if they have individualized reasonable suspicion that a felony or misdemeanor has been committed, but notes that behavior susceptible to an innocent interpretation does not generate founded or reasonable suspicion that criminal activity is afoot (People v. DeBour, 40 N.Y., N.Y.2d 210 (1976)) (10 Board Review). People v. Hampton states that location alone does not justify police intrusion against citizens who live, work, or travel in high crime areas, and that behavior susceptible of an innocent interpretation does not generate founded or reasonable suspicion that criminal activity is afoot (People v. Hampton, 200 AD2d 466 (1994)) (19 Board Review).

§ 87(2)(g)

[REDACTED]

Allegation E – Abuse of Authority: Police Officer Patrick Cahill threatened to arrest

§ 87(2)(b)

§ 87(2)(b) said that PO Gonzalez approached § 87(2)(b) who was seated in the front passenger seat, and asked him for his ID. § 87(2)(b) asked why he needed to provide ID because he was not doing anything and was not driving the vehicle. PO Gonzalez asked for his ID again, and said, “We can do this the hard way, take you to the precinct, run your name, and figure out who you are, or do it the easy way. Do you have ID?” § 87(2)(b) then provided his ID. § 87(2)(b) did not provide a statement to the investigation.

PO Cahill stated that he approached § 87(2)(b) asked him who he was, where he was coming from and where he was going, and what he was doing. PO Cahill stated that § 87(2)(b) was not very cooperative, but that when he asked for ID, § 87(2)(b) provided it. PO Cahill did not hear

PO Gonzalez make a statement to the effect of “We can take you to the precinct, run your name, and figure out who you are that way,” and did not recall whether he made a statement to that effect. PO Cahill did not threaten to arrest § 87(2)(b). PO Gonzalez denied speaking to the male seated in the front seat. PO Gonzalez denied that he or PO Cahill told the males that they could take them to the station house and run their names. PO Gonzalez did not recall whether PO Cahill made a statement to that effect.

§ 87(2)(g)
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§ 87(2)(g)

Allegation F – Abuse of Authority: Police Officer Andres Gonzalez stopped § 87(2)(b)

Allegation G – Abuse of Authority: Police Officer Patrick Cahill stopped § 87(2)(b)

Allegation H – Abuse of Authority: Police Officer Andres Gonzalez frisked § 87(2)(b)

§ 87(2)(b) stated that PO Gonzalez and PO Cahill had returned to their RMP with his and § 87(2)(b)'s ID. While the officers were at their RMP, § 87(2)(b) exited § 87(2)(b) and walked to the sidewalk. PO Gonzalez and PO Cahill walked towards § 87(2)(b)'s vehicle and PO Cahill asked for § 87(2)(b)'s ID. § 87(2)(b) asked why the officers needed his ID when they had seen him exit the residence, but provided his ID anyway. § 87(2)(b) noted that there was no reason to ask § 87(2)(b) for his ID if they had been stopped because the driveway was blocked. § 87(2)(b) did not provide a statement to the investigation.

§ 87(2)(b) did not allege that PO Cahill or PO Gonzalez frisked § 87(2)(b). However, the Stop, Question and Frisk Report prepared by PO Gonzalez notes that § 87(2)(b) was frisked, which PO Gonzalez confirmed in his subsequent interview (05 Board Review).

PO Gonzalez stated that as he and PO Cahill approached the rental vehicle, § 87(2)(b) exited § 87(2)(b) and began walking towards the rental vehicle. PO Gonzalez approached § 87(2)(b) because he did not know if § 87(2)(b) resided or belonged at that residence, and did not know who he was. PO Gonzalez stated that § 87(2)(b) was not wearing any construction gear and there was nothing about § 87(2)(b) that made him suspicious. PO Gonzalez asked § 87(2)(b) if he lived there and asked him what was going on. § 87(2)(b) responded, “Why? Why am I being stopped?” When asked if there was anything about § 87(2)(b)'s appearance that made him think that he did not live at that residence, PO Gonzalez explained that the way § 87(2)(b) responded to his question, “Do you live here,” made him suspect that § 87(2)(b) did not belong there. However, PO Gonzalez did not list any observations he made prior to engaging with § 87(2)(b). PO Gonzalez told § 87(2)(b) that it was a burglarized area and he needed to verify that § 87(2)(b) lived at that address. In PO Gonzalez's first statement, he said that § 87(2)(b) explained that he did live there and that he was just getting juice. PO Gonzalez

noted that he had a juice pack in his hand. PO Gonzalez said that he then asked for § 87(2)(b)'s ID, which was provided and confirmed that he lived at that address.

In PO Gonzalez's second statement, he stated that he frisked § 87(2)(b) after explaining that it was a burglarized area and he needed to verify his address but prior to asking him for his ID (17 Board Review). PO Gonzalez did not observe any bulges prior to frisking § 87(2)(b). PO Gonzalez stated that he feared for his and his partner's safety because they were in a heavily burglarized area, and people who commit burglaries often carry tools or weapons. PO Gonzalez told § 87(2)(b) that he was going to check him for weapons. § 87(2)(b) did not say anything or object, but if he had, PO Gonzalez would not have frisked him. PO Gonzalez touched § 87(2)(b)'s chest, waistband, and front and back pants pockets. PO Gonzalez did not find anything, enter any of § 87(2)(b)'s pockets, or search § 87(2)(b). PO Gonzalez stated that after he frisked § 87(2)(b) he asked for his ID. § 87(2)(b) provided his ID, which confirmed that he lived at § 87(2)(b).

PO Gonzalez was shown a copy of the Stop, Question and Frisk Report that he prepared. When asked why the "Furtive movements" box was checked, PO Gonzalez stated that § 87(2)(b) was very hesitant. When asked to elaborate, PO Gonzalez explained that § 87(2)(b) walked quickly out of the house towards PO Gonzalez, and kept moving his body during the frisk. PO Gonzalez stated that § 87(2)(b) did not make any furtive movements prior to being patted down. When asked to elaborate on the actions indicative of engaging in violent crime, PO Gonzalez stated that there were no actions or factors other than the fact that he was unsure about whether § 87(2)(b) resided at that address, and that he walked towards the rental vehicle § 87(2)(b) had entered.

PO Cahill stated that § 87(2)(b) was not wearing any construction attire and was not doing anything suspicious.

The Stop, Question and Frisk Report listed Grand Larceny Auto as the suspected crime, and "Actions indicative of engaging in violent crimes" as the only circumstance that led to the stop. The Stop, Question and Frisk Report noted that § 87(2)(b) was frisked, and engaged in furtive movements. "Area has high incidence of reported offense of type under investigation" was listed under Additional Circumstances/Factors. The Burglary, Robbery, and Grand Larceny Patterns Spreadsheet from the 106th Precinct from January 1, 2016, to June 29, 2016, did not show any crime patterns involving rental cars, construction workers, or individuals impersonating construction workers prior to May 5, 2016 (09 Board Review).

People v. DeBour states that an officer may stop an individual if they have individualized reasonable suspicion that a felony or misdemeanor has been committed, but notes that behavior susceptible to an innocent interpretation does not generate founded or reasonable suspicion that criminal activity is afoot. People v. DeBour also states that an officer may frisk an individual during a Level 3 stop if they have reasonable suspicion that they are in danger of physical injury, or that the subject is armed and dangerous (People v. DeBour, 40 N.Y., N.Y.2d 210 (1976)) (10 Board Review). Patrol Guide Procedure 212-11 authorizes an officer to stop an individual when they reasonably suspect a person has committed, is committing, or is about to commit a felony or Penal Law misdemeanor. Patrol Guide Procedure 212-11 also authorizes an officer to frisk an individual when they reasonably believe that they or others are in danger of physical injury (11

Board Review). People v. Hampton states that presence in a high crime area alone does not justify police intrusion against citizens who live, work, or travel in high crime areas (People v. Hampton, 200 AD2d 466 (1994)) (19 Board Review).

§ 87(2)(g) [REDACTED]

[REDACTED]

Allegation I – Abuse of Authority: Police Officer Patrick Cahill refused to provide his name and shield number to § 87(2)(b)

§ 87(2)(b) stated that when PO Gonzalez and PO Cahill went back to their vehicle, he called his ex-girlfriend’s mother, § 87(2)(b). When the officers returned to § 87(2)(b)’s vehicle, § 87(2)(b) asked PO Gonzalez for his information and PO Gonzalez provided his name and shield number. § 87(2)(b) stated that he asked PO Cahill for his name and shield number. PO Cahill said, “I don’t need to give you my information,” and did not provide his name or shield number. PO Cahill also told § 87(2)(b) to get off the phone and asked why he was calling his mother. § 87(2)(b) did not ask PO Cahill for his name and shield number again, because § 87(2)(b) told him not to worry about it. § 87(2)(b) asked § 87(2)(b) if he could see a badge. PO

Cahill had his shield displayed on his right hip. § 87(2)(b) documented PO Cahill's shield number as 20600.

PO Cahill, shield number 24600, stated that one of the males asked for his information and PO Gonzalez's information, and said that they both provided their information verbally. PO Cahill did not hear any of the males say that they could not hear the information. PO Cahill did not recall whether the males asked him or PO Gonzalez to repeat their information, or whether they said that he or PO Gonzalez did not provide their names and shield numbers. PO Cahill did not recall asking § 87(2)(b) to get off the phone. PO Cahill did not prepare a memo book entry related to this incident. When asked why, he said that it was PO Gonzalez's stop and explained that when his partner makes a stop and notes civilians' information, he does not.

PO Gonzalez stated that the male on the phone in the back seat asked for his name and shield number, and he provided it. PO Gonzalez stated that one of the males asked for PO Cahill's name and shield number, and PO Cahill provided the information.

P.G. 203-09 requires officers to courteously and clearly state their name, rank, shield, and command to anyone who requests them to do so (13 Board Review).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g), § 87(4-b)

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(g), § 87(4-b)

[REDACTED]

[REDACTED]

Squad: 3

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date